



SURFACE TRANSPORTATION BOARD

[Docket No. FD 36306 (Sub-No. 1)]

RFM Holdco LLC—Control Exemption—Pioneer Railcorp, et al.

[Docket No. FD 36451]

The Baupost Group, L.L.C. and US Infravest Managers LP—Control Exemption—Pioneer Railcorp, et al.

The Board has received two verified notices of exemption seeking authority to acquire control of Pioneer Railcorp (Pioneer), a noncarrier holding company, and the 15 Class III railroads controlled by Pioneer (the Pioneer Railroads).¹ In Docket No. FD 36306 (Sub-No. 1), RFM HoldCo LLC (RFM) seeks an after-the-fact exemption for its unauthorized 2019 acquisition of control of Pioneer and the Pioneer Railroads. (RFM Verified Notice 1, FD 36306 (Sub-No. 1) et al.) In Docket No. FD 36451, The Baupost Group, L.L.C. (Baupost), and US Infravest Managers LP (Infravest Managers) seek authority to acquire indirect control of Pioneer and the Pioneer Railroads from a subsidiary of RFM, Related Infrastructure Holdings LLC (Related Infrastructure Holdings). (Baupost Verified Notice 1 & Ex. 3, FD 36451.) Both notices were held in abeyance pending further order of the Board. See Baupost Grp., L.L.C.—Control Exemption—Pioneer Railcorp, FD 36451 et al. (STB served Nov. 25, 2020); RFM HoldCo LLC—Control Exemption—Pioneer Railcorp, FD 36306 (Sub-No. 1) et al. (STB served Dec. 28, 2020).

¹ They are: Alabama & Florida Railway Co., Inc.; Alabama Railroad Co., Inc.; Decatur Junction Railway Co.; Elkhart & Western Railroad Co.; Fort Smith Railroad Co.; The Garden City Western Railway, Inc.; Georgia Southern Railway Co.; Gettysburg & Northern Railroad Co.; Indiana Southwestern Railway Co.; Kendallville Terminal Railway Co.; Keokuk Junction Railway Co.; Michigan Southern Railroad Company; Mississippi Central Railroad Co.; Pioneer Industrial Railway Co.; and Vandalia Railroad Company. (See Baupost Verified Notice 1-3, FD 36451.)

The Board finds that these transactions are not appropriate for the expedited class exemption process. However, after reviewing the supplemental information submitted in this docket, the Board will grant, on its own motion, the appropriate exemptions to authorize the transactions.

BACKGROUND

In June 2019, Brookhaven Rail Partners, LLC (Brookhaven), Related Infrastructure, LLC (Related Infrastructure), BRX Transportation Holdings, LLC (BRX Transportation), and BRX Acquisition Sub, Inc. (BRX Acquisition), obtained an exemption to acquire control of Pioneer and the Pioneer Railroads. See Brookhaven Rail Partners, LLC—Control Exemption—Pioneer Railcorp, FD 36306, slip op. at 1 (STB served June 21, 2019) (84 Fed. Reg. 29,276).

On October 22, 2020, in Docket No. FD 36451, Baupost and Infravest Managers filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to acquire indirect control of Pioneer and the Pioneer Railroads by acquiring a majority equity interest in BRX Transportation. (See Baupost Verified Notice 1-4, FD 36451.) Baupost and Infravest Managers identified the current owner of the majority equity interest in BRX Transportation as “an affiliate of Related Infrastructure.” (Id. at 3-4.) In a supplement filed on November 2, 2020, Baupost and Infravest Managers² stated that, following the 2019 filing of the verified notice of exemption in Docket No. FD 36306 but before the filing of the verified notice in Docket No. FD 36451, two additional transactions had taken place. First, Related Infrastructure Acquisitions LLC (Related Acquisitions) transferred its interest in BRX Transportation to Related Infrastructure BRX Holdings

² The supplement was filed by Baupost and US Infravest Managers LP, but facts regarding Related Infrastructure and its affiliates were verified by Richard O’Toole, Vice President of Related Fund Management, LLC (Related Fund Management). (See Baupost Suppl. 5, Nov. 2, 2020, FD 36451.)

LLC (Related BRX Holdings).³ (Baupost Suppl. 2, Nov. 2, 2020, FD 36451.) Second, Related Infrastructure transferred its interest in Related BRX Holdings to Related Infrastructure Holdings LLC (Related Infrastructure Holdings), which now “directly owns and controls Related BRX Holdings.” (Id.) The supplement further stated that Related Infrastructure and Related Infrastructure Holdings are subsidiaries of Related Fund Management, (id.), and the verified notice in Docket No. FD 36306 identified Related Fund Management as a subsidiary of Related Companies, L.P. (Related Companies), (Brookhaven Verified Notice 2 n.2, June 7, 2019, Brookhaven Rail Partners, LLC—Control Exemption—Pioneer Railcorp, et al., FD 36306).

In a decision served November 25, 2020, the Board postponed the effective date of the exemption sought by Baupost and Infravest Managers in Docket No. FD 36451, held that proceeding in abeyance, and directed Related Infrastructure Holdings, Related Fund Management, and Related Companies (and any other entity or individual that controls Related Companies, as appropriate) to explain why Board authority was not required for the two transactions that occurred in 2019, or, if they believe such authority was needed, to seek after-the-fact authority under 49 U.S.C. 11323 to control Pioneer and the Pioneer Railroads. See Baupost Grp., L.L.C.—Control Exemption—Pioneer Railcorp, FD 36451 et al., slip op. at 3 (STB served Nov. 25, 2020).

On December 2, 2020, RFM filed its verified notice of exemption, identifying itself as “the highest person currently in the corporate chain of control,” (RFM Verified Notice 2, FD 36306 (Sub-No. 1) et al.), and elaborating on the transactions described in Baupost and Infravest Managers’ November 2, 2020 supplement. As stated by RFM,

³ Baupost and Infravest Managers stated that, when the verified notice was filed in Docket No. FD 36306, Related Acquisitions held the majority ownership interest in BRX Transportation, and “Related Infrastructure—the entity authorized to control Pioneer and the Pioneer Railroads through that proceeding—directly owned and controlled Related Acquisitions.” (Baupost Suppl. 2, Nov. 2, 2020, FD 36451.)

when the notice of exemption in Docket No. FD 36306 was filed on June 7, 2019, “Related Companies controlled Related Fund Management, which controlled Related Infrastructure, which controlled Related Acquisitions, which controlled BRX Transportation.” (Id.) Therefore, according to RFM, “Related Companies, as the ultimate controlling party, should have sought control authority . . . in FD 36306.” (Id. at 3.)

RFM stated, however, that it is the proper party to file the verified notice of exemption because of the second transaction that occurred in 2019—the transfer of the ownership interest in Related BRX Holdings from Related Infrastructure to Related Infrastructure Holdings—which RFM claims was part of a “broader intracompany reorganization.” (Id. at 3-4.) RFM states that, in the reorganization, Related Companies formed RFM; RFM formed a subsidiary, Related Infrastructure Holdings Investor LLC (Related Infrastructure Investor); Related Infrastructure Investor formed a subsidiary, Related Infrastructure Holdings; and Related Infrastructure’s interest in Related BRX Holdings was transferred to Related Infrastructure Holdings. (Id. at 4.) As a result, RFM replaced Related Companies as “the ultimate controlling party.” (Id. at 3-4.) According to RFM, it is “owned by equity holders of Related Companies,” and Related Companies and Related Fund Management no longer have any ownership interest in entities controlling BRX Transportation, Pioneer, or RFM. (Id. (footnote omitted).) RFM also noted that none of its equity owners have control of Related Companies or RFM. (Id. at 4 n.4.)

On December 3, 2020, Baupost and Infravest Managers filed a letter, which included the agreement through which Baupost and Infravest Managers are acquiring Pioneer and the Pioneer Railroads, stating that the parties “expect to consummate the transaction shortly after the Board allows the exemption in this proceeding to take effect.” (Baupost Letter 1, Dec. 3, 2020, FD 36451.) Baupost and Infravest Managers

also requested that the Board remove Docket No. FD 36451 from abeyance and allow the exemption to take effect promptly or, at the latest, no later than the day that the Board “resolves the issues regarding current control of Pioneer.” (Id.)

In a decision served December 28, 2020, the Board held RFM’s notice of exemption in abeyance and directed RFM to provide additional information. See RFM HoldCo LLC, FD 36306 (Sub-No. 1) et al., slip op. at 5. The Board found that, although RFM implied that it acquired control of Pioneer and the Pioneer Railroads when Related Infrastructure transferred its interest in Related BRX Holdings to Related Infrastructure Holdings, the organizational chart provided by RFM depicted both Related Infrastructure and Related Infrastructure Holdings as being under RFM’s control. Id. at 4. Additionally, the Board noted that neither of the agreements provided by RFM appeared to be relevant to the transaction in which it acquired control of Pioneer and the Pioneer Railroads. Id.

On January 6, 2021, RFM filed a supplement to its notice clarifying when it acquired control of Pioneer and the Pioneer Railroads. According to RFM, “[o]n December 13, 2019, the ownership interests in Related Fund Management were distributed to the owners of Related Companies and on the same date, immediately following that distribution, were contributed by those owners to RFM in exchange for equity interests in RFM.” (RFM Suppl. 2, FD 36306 (Sub-No. 1) et al.) On February 17, 2021, Baupost and Infravest Managers submitted a letter in Docket No. FD 36451 requesting that the proceeding be removed from abeyance and the exemption granted with an effective date in advance of the “End Date” in the parties’ purchase agreement.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(4), the “[a]cquisition of control of at least 2 rail carriers by a person that is not a rail carrier” requires Board authorization. The verified notices of exemption at issue in these proceedings were submitted under the class

exemption procedures found at 49 CFR 1180.2(d)(2), which provide an expedited process for obtaining control authority under 11323. These streamlined class exemption procedures are reserved for transactions involving routine, uncomplicated, and non-controversial matters, and which do not raise substantial factual and legal issues. See S. San Luis Valley R.R.—Acquis. & Operation Exemption—Iowa Pac. Holdings, LLC, FD 35586 et al., slip op. at 2 (STB served Feb. 10, 2012) (rejecting notice of exemption raising substantial questions about prior acquisitions); V & S Ry.—Aban. Exemption—in Kiowa Cnty., Colo., AB 603 (Sub-No. 3X), slip op. at 2 (STB served June 17, 2014).

The Verified Notices of Exemption. The verified notice filed by RFM and the verified notice filed by Baupost and Infravest Managers will be rejected because both matters are sufficiently complicated and non-routine to make them inappropriate for consideration under the streamlined class exemption procedures of 49 CFR 1180.4(g). Both proceedings involve the unauthorized acquisitions of control of Pioneer and the Pioneer Railroads by Related Companies and entities within RFM’s corporate family. RFM acquired control of Pioneer and the Pioneer Railroads, without Board authorization, from Related Companies, which itself also did not have Board authorization to control Pioneer and the Pioneer Railroads. (See RFM Verified Notice 3, FD 36306 (Sub-No. 1) et al.) Baupost and Infravest Managers are seeking to acquire control of Pioneer and the Pioneer Railroads from Related Infrastructure Holdings, a subsidiary of RFM, which does not currently have authority to control Pioneer and the Pioneer Railroads. Although RFM has sought after-the-fact control authority, Related Companies has not. RFM has argued both that Related Companies need not seek after-the-fact control authority, and that the Board should grant that authority to Related Companies through the Board’s streamlined class exemption procedures even though Related Companies did not itself

request it.⁴ (RFM Verified Notice 5 n.6, FD 36306 (Sub-No. 1) et al.) The facts cited during these proceedings, as described in detail above, demonstrate that these matters are not routine and require scrutiny by the Board outside of the streamlined class exemption procedures. See S. San Luis Valley R.R., FD 35586 et al., slip op. at 2-3. Therefore, the verified notices in Docket Nos. FD 36451 and FD 36306 (Sub-No. 1) will be rejected.

The Board also notes that the information provided during the course of these proceedings has at times been incomplete or inaccurate.⁵ For example, Baupost and Infravest Managers, in their notice, identified the entity from which they were acquiring control of Pioneer and the Pioneer Railroads as “an affiliate of” Related Infrastructure, without further detail. (See Baupost Verified Notice 3, FD 36451.) Later, the November 2, 2020 supplement filed in Docket No. FD 36451 provided incorrect information that identified Related Infrastructure Holdings as a “subsidiar[y] of Related Fund Management LLC,” notwithstanding that the facts in the supplement “regarding Related Infrastructure LLC and its affiliates” were verified by an official at Related Fund Management. (See Baupost Suppl. 1-2, FD 36451, Nov. 2, 2020, FD 36451.) Only after the Board postponed the effective date of the exemption in Docket No. FD 36451 and requested that Related Companies seek acquisition authority did the Board learn that Related Companies had transferred control of Pioneer and the Pioneer Railroads to RFM. RFM, for its part, filed a verified notice that failed to identify the date on which RFM acquired control of Pioneer and the Pioneer Railroads, which was later cured through its January 6 supplement. While the record does not indicate bad faith by these parties,

⁴ RFM was formed by equity owners of Related Companies, but RFM and Related Companies are not under common control because the equity owners do not have control of either Related Companies or RFM. (RFM Verified Notice 3-4 & n.4, FD 36306 (Sub-No. 1) et al.)

⁵ Given the Board’s finding that the class exemption procedures are inappropriate in light of the facts and circumstances, it need not address whether the notices were also false or misleading. See, e.g., 49 CFR 1180.4(g)(1)(ii).

inaccuracies and omissions such as these raise questions that often cannot be adequately addressed under the streamlined class exemption procedures. It is important for parties to ensure that their filings in exemption (and other) proceedings are accurate and complete. Nevertheless, as discussed below, the Board has now received from the parties adequate information for the Board to assess, sua sponte and pursuant to the exemption standard set forth at 49 U.S.C. 10502(a), the appropriateness of granting exemptions in these proceedings.⁶

The Sua Sponte Exemptions. As noted, the Board has now received multiple filings in these proceedings providing information about the transactions involving Related Companies and RFM that occurred without Board authority. Although there does not appear to be bad faith, this does not excuse the failures to obtain Board authorization; and while RFM has now sought to cure the defect, the Board remains troubled that the parties did not adequately consider the required authorizations at the appropriate time.

When it rejects verified notices in non-routine or controversial cases, the Board often requires parties to seek the necessary authority by petition for exemption or application. Here, however, an extensive record has already been developed through the supplemental pleadings. Additionally, the Board is mindful of the fact that the proposed acquisition by Baupost and Infravest Managers to acquire Pioneer and the Pioneer Railroads is also pending before the Board. That transaction, but for the failures of the selling entity (RFM and its subsidiaries) discussed above, would have met the standards for the expedited class exemption process. To require RFM to file a petition for exemption or application to remedy the prior unauthorized transactions would further

⁶ In granting acquisition authority sua sponte, the Board would effectively proceed as though the parties had formally petitioned for exemption. The Board will consider below the value of requiring such petitions at this stage of the proceedings and the harm that could arise from the ensuing delay.

delay, and possibly frustrate, Baupost and Infravest Managers' proposed transaction. (Baupost Letter 1, Feb. 17, 2020, FD 36451.) No party has sought to oppose Baupost and Infravest Managers' proposed acquisition of control of the Pioneer Railroads, and one of the stated goals of that transaction is to "improve Pioneer's efficiency, financial strength, and ability to meet the needs of shippers." (Baupost Verified Notice 5, FD 36451.) Baupost argues that further delaying its acquisition would, among other things, "affect the ability of Pioneer and the Pioneer Railroads to accelerate capital expenditures." (Baupost & Infravest Managers Letter 2, Dec. 3, 2020, FD 36451.)

For the reasons discussed above and based on the particular facts of this case, the Board concludes that it is appropriate to consider granting the exemptions sua sponte pursuant to 10502. See, e.g., BNSF Ry.—Pet. for Declaratory Order, FD 35164 et al., slip op. at 10 (STB served May 20, 2009); Borealis Infrastructure Trust Management—Acquis. Exemption—Detroit River Tunnel Co., FD 33984 et al., slip op. at 6 (STB served Dec. 19, 2001). The Board will consider here the merits of the exemptions requested in these dockets and, as discussed further below, will grant the exemptions sua sponte.

As RFM, Baupost, and Infravest Managers are each noncarriers, their acquisitions of control of the Pioneer Railroads require prior Board approval under 49 U.S.C. 11323(a)(4). Because the acquisitions of control do not involve the merger or control of at least two Class I railroads, approval of the transactions is governed by 49 U.S.C. 11324(d). However, under 49 U.S.C. 10502(a), the Board must exempt a transaction or service from regulation upon finding that: (1) regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Here, exemptions from the prior approval requirements of sections 11323-25 are consistent with 10502(a). Detailed scrutiny of the acquisitions of control of the Pioneer

Railroads in each docket is not necessary to carry out the RTP. An exemption from the application process would promote a fair and expeditious regulatory decision-making process, minimize the need for Federal regulatory control, reduce regulatory barriers to entry, and result in more expeditious handling of this proceeding.

See 49 U.S.C. 10101(2), (7), (15). Other aspects of the RTP would not be adversely affected.

Regulation of these transactions is not needed to protect shippers from the abuse of market power. RFM states that it “does not own or control any other carriers other than the Pioneer Railroads, nor did it, or its equity owners, at the time of its formation.” (RFM Verified Notice 4 n.5, FD 36306 (Sub-No. 1) et al.) Accordingly, RFM’s 2019 acquisition of control of Pioneer and the Pioneer Railroads did not create any adverse change in competition among rail carriers or between rail carriers and other modes. For their part, Baupost and Infravest Managers also state that they “are not themselves rail carriers and do not currently control any rail carriers,” (Baupost Verified Notice 4, FD 36451), so their proposed acquisition of Pioneer and the Pioneer Railroads similarly would not adversely affect the competitive landscape so as to require regulation to protect shippers from an abuse of market power.⁷

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, precludes the Board from imposing labor protections for transactions involving only Class III rail carriers. Because all the Pioneer Railroads are Class III carriers, the Board may not impose labor protections here.

⁷ Because this decision finds that regulation is not necessary to protect shippers from the abuse of market power, the Board need not determine whether the transaction is limited in scope. See 49 U.S.C. 10502(a)(2).

In light of Baupost's and Infravest Managers' request regarding the effective date, the exemptions will be effective on March 26, 2021. Petitions to stay will be due by March 24, 2021.

The transactions are categorically excluded from environmental review under 49 CFR 1105.6(c)(1) and from the historic reporting requirements under 49 CFR 1105.8(b).

It is ordered:

1. The verified notices of exemption in Docket Nos. FD 36306 (Sub-No. 1) and FD 36451 are rejected.

2. In Docket No. FD 36306 (Sub-No. 1), under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. sections 11323-25 RFM's 2019 acquisition of control of the Pioneer Railroads.

3. In Docket No. FD 36451, under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323-25 Baupost's and Infravest Managers' acquisition of control of the Pioneer Railroads from RFM.

4. Notice of the exemptions will be published in the Federal Register.

5. The exemptions will be effective on March 26, 2021. Petitions to stay will be due by March 24, 2021.

Decided: March 18, 2021.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.
Board Member Primus dissented with a separate expression.

BOARD MEMBER PRIMUS, dissenting:

This case is extremely troubling and lays bare gaps in compliance that I am not willing to excuse. The focus of my displeasure is not directed toward Baupost and Infravest Managers, but rather Related Companies and RFM. When the history of

Related Companies and RFM is taken into account, specifically their inability to provide accurate and complete information to the Board with respect to ownership, what we have before us is at best a comedy of errors and at worst a blatant disregard for the Board's role as the economic regulator of the rail industry.

The Board was faced with two notices of exemption involving a chain of unauthorized transactions. Details surrounding the history of the ownership of Pioneer and the Pioneer Railroads is murky and unnecessarily complicated. Upon further review, it was revealed that Related Companies never obtained Board authorization to acquire Pioneer and the Pioneer Railroads. Similarly, RFM skirted Board authority when it acquired the railroad entities from Related Companies. Only now, when Baupost and Infravest Managers have come before the Board to acquire control of these railroad entities, has RFM decided to step into the light.

Failure to obtain the required Board authority lies squarely with RFM. Both RFM and its subsidiaries (and Related Companies before it) did not bother to adhere to 49 U.S.C. § 11323, which clearly requires an entity seeking to purchase/acquire a railroad to obtain Board authority. Given the fact that the proposed acquisition involves unauthorized transactions, it was incumbent upon the parties to be forthcoming with accurate and complete information about the ownership and relationship of the numerous railroads involved in the proposed transaction. This clearly did not happen.

Accordingly, I do not believe that the selling entity should be permitted to benefit or profit from such a transaction without first curing its unauthorized acquisition. While RFM has asked for after-the-fact authority, it has done so through the Board's streamlined class exemption procedures, which are reserved for transactions involving routine, uncomplicated, and non-controversial matters, and not appropriate here. Moreover, Related Companies has not sought after-the-fact authority for its unauthorized acquisition.

My hope is that, moving forward, the Board will begin to look at ways to effectively promote greater compliance and transparency as it relates to the licensing of rail activities. For those who continue to operate outside the rules, stronger enforcement, including the administering of severe penalties when appropriate, should prevail.

For these reasons, I respectfully dissent.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2021-06066 Filed: 3/23/2021 8:45 am; Publication Date: 3/24/2021]